IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF OCTOBER,
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 24557 of 2000

Between:

S.Sivakumar s/o.M.Subrahmanyam,

Aged 41 years,Working as Constable,CISF,

SCCL, RKP Area, CCC, Naspur Post,

Adilabad Disttrict.

..... PETITIONER

AND

1.Union of Inida, rep. by its Secretary,

Home Affairs, Central Secretariat,

New Delhi.

2.Director General,

Central Industrial Security Force,(CISF)

Ministry of Home Affairs, Block No.13,

CGOs Complex, Lodhi Road,

New Delhi.

3.The Deputy Inspector General,

South Zone, CISF (South Zone H.Q.),

Block-D, Rajaji Bhavan, Decent Road,

Chennai-600 090.

4.The Commandant, CISF Unit,

Singareni Coal Colleries Limited,

H.Q.Bellampalli, Adilabad District.

5.The Deputy Commandant,

Central Industrial Security Force, CISF Unit,

Singareni Coal Colleries Ltd., (S),

Ramakrishnapur Area, CCC, Naspur Post,

Adilabad District.

6.Assistant Commandant, CISF Unit,

Singareni Coal Colleries Ltd., RKP Area,

CCC, Naspur Post, Adilabad District.

.....RESPONDENTS

(The learned counsel has amended the prayer as per Court Order in W.P.M.P.No.1304 of 2001, dated 17-07-2002).

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pass an order or direction or writ more appropriately writ of mandamus to declare final orders of the punishment passed by the original authority i.e. Deputy Commandant, CISF Unit, SCCL(S), RKP Area vide proceeding No.V-15014/Disc/RKP/SK/1489 dt.13.4.2000 basing on the charge memo No.V-15014/Disc/RKP/SCCL/1093 dt.16.3.2000 and the consequential appeal orders passed by the commandant, CISF Unit, SCCL (S),Bellampalli, Adilabad Dist., vide proceedings No.V-11014/CISF/SCCL/Disc/Appeal-38/2K-8460 dt.18.8.2000 as illegal and set aside the same and further direct the Commandant ,CISF Unit, SCCL, H.Q.Bellampalli, Adilabad Dist., to give effect the promotion to the petitioner as per the Proceedings No.E-38014/20 SCCL(B)/AD.I/PROM/2K/9636 dt.25.9.2000 with immediate effect by declaring the proceedings NO.E-31014(1)/2K/Esst.II/Vol.II/3987 dt.1.12.2000 and consequential office Memo No.E-38014/CISF/SCCL/RKP/2K-4633 dt.20.12.2000 issued by the 5th respondent i.e., Deputy Commandant, CISF Unit, SCCL(S), RKP Area, Naspur post, Adilabad District as null and void.

Counsel for the Petitioner: MR.K.RAJANNA

Counsel for the Respondents: Mr.Akhter Ahmed Jabri,
Addl.S.C. for Central Government.

The Court made the following :

ORDER:

Originally this writ petition was filed seeking a writ of mandamus to declare the final orders passed by the disciplinary authority dated 13-4-2000 as confirmed by the appellate authority by its order dated 18-8-2000 as illegal and arbitrary and consequently direct the respondents to give effect to the promotion of the petitioner dated 25-9-2000 with immediate effect. Thereafter, W.P.M.P.No.1304 of 2001 was filed for amendment of the writ petition and the same was ordered on 17.7.2002. Thus, the petitioner is seeking declaration of the proceedings dated 13-4-2000 as confirmed by the appellate authority dated 18-8-2000 as arbitrary and illegal and consequently to declare the proceedings dated 1-12-2000, 20-12-2000 as illegal and arbitrary.

By proceedings dated 16-3-2000 a charge memo was issued to the petitioner and after concluding the disciplinary proceedings final order was passed on 13-4-2000 imposing a punishment of fine equivalent to seven days salary and the same was confirmed by the appellate authority by its proceedings dated 18-8-2000. By proceedings dated 25-9-2000, the petitioner was promoted to the post of Head Constable, but the same was not given effect to in view of the disciplinary proceedings pending against him. Thereafter, by order dated 20-12-2000 the said promotion order was withdrawn.

The petitioner was originally appointed as Constable in CISF unit in the year 1982. In the year 1998, he was detailed at Bellampally Singareni Coal Colleries Company Limited. While so, on 16-3-2000 he was detailed for A shift duty. According to the petitioner, he was suffering from dysentery (loose motions) from the mid-night of 15-3-2000. Therefore, he was not in a position to attend to his duties. However, he went to the Shift Officer and reported the matter and since he was suffering much immediately he left to the hospital and again he came to the work spot and asked the concerned Officer to record his illness in the G.D. register, which was not done. However, since the petitioner was suffering from illness, he went his room and took rest on the medical advice and further he was declared fit to attend duty on 21st March, 2000. Therefore, the petitioner along with the medical certificate issued by the competent authority reported for duty on 21-3-2000. As soon as he went to report for duty, the Unit Officer issued a charge memo on 21-3-2000 stating that the petitioner willfully absented from duty from 16-3-2000 to 20-3-2000. On this the petitioner submitted an explanation stating that as per the duty detailment chart

displayed on the notice board on the evening of 15-3-2000 he was detailed for A shift duty i.e. from 0600 hours to 1300 hours, but he was not detailed for RK. 6 Magazine duty. He further stated that on 15-3-2000 from mid-night onwards, he was suffering from dysentry and had attended 6 to 7 times emergency calls till the early morning. Due to which he became very weak. However, he attended A shift and was detailed for duty at CSP-I Weight Bridge duty post. After making signature in the register, he was to move shift bus, but suddenly he got stomachache and sensation of emergency call. Immediately he approached Shift-in-charge and expressed his inability to perform the duty entrusted to him, but the Shift-in-charge told him that his duty has been changed and asked him to go RK.6 Magazine duty. He once again apprised him about is inability to perform either A shift duty or magazine duty due to stomachache, dysentry and requested the Shift-in-charge to relieve him from duty so that he can get medical treatment at the hospital. Thereafter, he left for the hospital and got medicine and as per the advice of the hospital authorities he took rest. After returning from the hospital he went to Unit Control Room to make G.D. entry about his medical rest. But, the Shift-in-charge denied to make a G.D. entry and told him to take the consent of Unit Commander for making such entry. Then he approached the Area Commander and apprised him about his problem, but the Area Commander refused to hear his problem. Thereafter, he left for his room to take rest and continued on medical rest till 20-3-2000 as per the advice of the doctor. Further, he stated that the charges levelled against him are not warranted in the circumstances of the case.

Though the petitioner made several references as to his attending to duty on 16-3-2000, the aspects relating to approaching the Shift-in-charge and the Area Commander for making an entry in the G.D. register and also producing the medical certificate issued by the competent authority on 21-3-2000 when he was reporting for duty, were not enquired into by the disciplinary authority. On the other hand, it had stated that to conceal the fact, the individual has fabricated a story to escape from the charge by producing medical unfit certificate that he was suffering from stomachache and dysentery. It is curious to note that the competent medical officer has issued a certificate on 21-3-2000 stating that the petitioner was unfit for duty on 16-3-2000. Such a certificate was not taken into consideration and the reasons were not mentioned except saying that it is fabricated. If really the respondents felt that it was a fabricated certificate, they could have made an enquiry into the matter and

serious action would have been taken against the petitioner. Unfortunately, except the self-serving statement of the management, no relevant person was examined in this case and a penalty of deduction of pay equivalent to seven days was imposed, which resulted in the denial of substantial promotion to the post of Head Constable by proceedings dated 25.9.2000, which was cancelled on 20.12.2000.

For all the above reasons, I am of the opinion that the impugned order does not stand the scrutiny of law and, therefore, it is liable to be set-aside and is accordingly set-aside, leaving it open to the respondent-authorities to conduct an enquiry in detail, if necessary, before imposing any punishment on the petitioner. Therefore, the order dated 20.12.2000 canceling the promotion of the petitioner also is liable to be set aside and is accordingly set aside. Thus promotion order dated 25-09-2000 shall stand restored and shall be given effect subject to the orders to be passed by the authorities, if any, in the disciplinary proceedings.

The writ petition is accordingly allowed to the extent as indicated above. No costs.

11.10.2004

Stp.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Monday the Eleventh day of October Two Thousand and Four.

ASSISTANT REGISTRAR

To

1. The Secretary, Union of India,

Home Affairs, Central Secretariat,

New Delhi.

2. TheDirector General,

Central Industrial Security Force,(CISF)

Ministry of Home Affairs, Block No.13,

CGOs Complex, Lodhi Road,

New Delhi.

3.The Deputy Inspector General,

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6. The Assistant Commandant, CISF Unit,

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CCC, Naspur Post, Adilabad District.

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THE HONOURABLE SRI JUSTICE C.V.RAMULU

W.P.NO.24557 of 2000

11.10.2004